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SUBJECT: TURKEY: 8TH ANNUAL TIP REPORT: INVESTIGATION AND
PROSECUTION

REF: SECSTATE 2731

11. (U) Sensitive but unclassified. Please protect
accordingly.

12. (U) Post's responses are keyed to reftel questions. This
is part 2 of 3 (septels).

INVESTIGATION AND PROSECUTION OF TRAFFICKERS

1A. (U) Chapter 1, Article 80 of the Turkish Penal Code (TPC) specifically defines human trafficking and prescribes penalties for traffickers and their accomplices. The law covers both internal and transnational forms of trafficking. Penalties range from eight to twelve years of imprisonment (up from five to ten years in earlier versions of the law), and, at judicial discretion, an additional penalty of up to ten thousand days. Trafficking crimes can also be (and have been) prosecuted under statutes of the Law on Combating Benefit-Oriented Criminal Organizations, Turkish Citizenship Law, Labor Law, Law on Motivating for Prostitution, Law on Working Permits for Foreigners, and the Law on the Prevention of Money Laundering.

Under the amended Article 4 of the Terrorism Prevention Act, a crime, such as TIP, committed by a terrorist organization can be prosecuted as a terrorist crime. The terrorist PKK, for example, is known to fund its terrorist operations through human trafficking and other transnational crimes.

The Highway Transport Law (July 19, 2003) and the Highway Transport Regulation (February 25, 2004) include provisions that limit the ability of human traffickers to use transport vehicles to traffic persons.

In December 2006, the Turkish parliament passed and the Turkish President signed into law amendments to two key articles in the TPC. Lawmakers added forced prostitution to Article 80, the primary anti-trafficking article, and removed forced prostitution from the Law on Motivating to Prostitution (Article 227), the prostitution and pimping article.

Chapter 1, Article 80: Human Trafficking (as amended December 19, 2006):

(1) A person who procures or kidnaps persons or who takes or transports persons from one place to another or who harbors

persons with a view to force them to work or to provide a service, made them be involved in prostitution or to subject them to slavery or similar practices or to donate their organs by exerting threats, pressure, force or violence, by abusing his authority, by deceit or by obtaining their consent through taking advantage of the opportunities they have to control them or of their helplessness shall be sentenced to imprisonment for a term of eight to twelve years and a judicial fine imposed equivalent of up to ten thousand days.

(2) In the event of actions which are undertaken for the purposes referred to in the first paragraph and which constitute an offense, the consent of the injured party shall be deemed void.

(3) Where juveniles under eighteen years of age are procured, kidnapped, taken or transported from one place to another or harbored for the purposes referred to in the first paragraph, the perpetrator shall be sentenced to the penalties referred to in the first paragraph, notwithstanding that none of the acts instrumental to the offense has been resorted to.

(4) Security measures shall be taken for legal entities on account of the above-mentioned crimes.

On June 1, 2005, Article 80 replaced the following anti-trafficking statutes in effect since August 3, 2002 (some court cases initiated before the current reporting period have continued under this article during the reporting period):

Article 201(b):

(1) Those who provide, kidnap, take or transfer from one place to another and house other individuals with the intention of making them work or serve by force, subject them to slavery or similar treatment, threaten, pressure, use force or coercion to persuade them to give up their bodily organs, use undue influence, secure their consent by deception or by using the desperation of such individuals shall be sentenced to five to ten years of heavy imprisonment and a heavy fine of not less than one thousand lira (\$833).

(2) If the actions that constitute a crime attempted with the intentions laid out in the first paragraph exist, the victim is assumed not to have given his/her consent.

(3) If children below the age of eighteen are provided, kidnapped, taken or transferred from one place to another or housed with the intentions specified in paragraph one, even when no intermediary actions in relation to the crime are committed, the penalties foreseen in paragraph one shall still be applied to the perpetrator.

(4) If the crimes listed in the paragraphs above are committed in an organized manner, the penalties foreseen for the perpetrators shall be doubled.

Turkey has adopted the following international conventions:

- ILO Convention 182 (ratified 2001);
- ILO Convention 29 and 105 on Forced or Compulsory Labor (ILO Convention 29 went into effect on January 27, 1998 and ILO Convention 105 on December 21, 1960);
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (ratified May 9, 2002);
- The Protocol to Prevent, Suppress and Punish Trafficking-in-Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime (ratified March 18, 2003).

1B. (U) The amended TPC Article 80 provides penalties for traffickers of eight to twelve years imprisonment and, at judicial discretion, a judicial fine equivalent to ten thousand days imprisonment. The penalties apply to both traffickers of human beings for sexual exploitation and

traffickers of human beings for labor exploitation.

¶C. (U) Labor exploitation can be prosecuted under Article 80, which carries penalties of eight to twelve years imprisonment plus the possibility of an additional judicial fine equivalent to ten thousand days imprisonment (see above). No evidence has been reported to us that Turkey is a forced labor source country. Turkey is not a significant forced labor destination country.

The Ministry of Labor and Social Security is authorized to prevent uncontrolled employment of foreign labor and to grant work permits under the Law on Work Permits for Foreigners (number 4817) (effective September 6, 2003).

Under law 4817, foreigners must be formally permitted to work in Turkey and registered with social security or they and their employers can be subject to a fine. 4817 stipulates that employment contracts must be written in Turkish and the language of the foreign employee. The GOT is authorized to reject permits for employment that threatens "general health and/or morals." The Ministry of Labor (MOL) undertook active investigations of illegally employed foreigners during the reporting period, reporting that it investigated over 103,000 workplaces and 584,000 employees between October 2006 and ¶2007. 243 illegal foreigners were identified; they were all screened by TNP for evidence of trafficking.

¶D. (U) Chapter 1, Section 6 of the TPC provides varying degrees of penalties for sexual assault, rape, and sexual abuse of adults and minors, as noted below. Penalties may range from two years to life imprisonment, depending upon the circumstances. Penalties for rape can be less or more than penalties for trafficking, depending on the situation.
Section 6: Offenses Against Sexual Integrity

Article 102: Sexual Assault

(1) The perpetrator who violates the physical integrity of another person by means of sexual conduct shall be imprisoned for a term of two to seven years upon the complaint of the victim.

(2) Where the act is committed by means of inserting an organ or similar object into the body, the perpetrator shall be imprisoned for a term of seven to twelve years. If the act is committed against the spouse, legal investigation and prosecution shall be initiated if the victim lodges a complaint.

(3) If the offense is committed,

- a) Against a person who is physically or mentally incapable of defending him/herself,
- b) By breaching of duties and/or abusing the functions pertaining to the official status,
- c) Against a person of first, second, or third degree blood relation or a relative by marriage,
- d) By using weapons and with the cooperation of more than one person, penalties imposed in accordance with articles above shall be increased by half.

(4) In case excessive violence is exerted on the victim during the commitment of the offense, the perpetrator shall also be punished for deliberate wounding.

(5) In case the offense causes damage to the physical or mental health of the victim, the perpetrator shall be imprisoned for a term of not less than ten years.

(6) If, as a result of the crime, the victim enters into a vegetative state or dies, the sentence will be strict life imprisonment.

Article 103: Sexual Abuse of Children

(1) The perpetrator of child abuse shall be imprisoned for a term of three to eight years. Sexual abuse means:

a) any act of a sexual nature against a minor who has not reached fifteen years of age, or, if over fifteen years of age, lacks the competence to perceive the legal meaning and consequences of such acts.

b) sexual acts against other minors depending on use of force, threat, deception, or by any other reason affecting the will of the child.

(2) Where the sexual assault occurs as a result of insertion of an organ or similar object into the body, a penalty imprisonment from eight to fifteen years shall be imposed.

(3) Where the sexual assault is committed by a first, second or third degree blood relative, step-father, the person who has adopted the person concerned, guardian, tutor, teacher, caretaker, or other person in charge of providing health services or who bears the obligation for protection or supervision, or through abuse of the service relation, the penalty to be imposed, in accordance with the above paragraphs, shall be increased by half.

(4) Where the sexual assault is committed against a minor indicated in paragraph 1(a) as a result of force or threat, the penalty to be imposed, in accordance with the above paragraphs, shall be increased by half.

(5) Where the force and compulsion used with the aim of sexual assault lead to aggravated consequences of the offense of deliberate wounding, provisions of the offense of deliberate wounding shall apply additionally.

(6) In case the offense results in damage to the physical or mental health of the victim, the perpetrator shall be imprisoned to strict life imprisonment.

(7) Where the offense leads the victim into a vegetative state or to death, the perpetrator shall be sentenced to strict life imprisonment.

1E. (U) Prostitution in Turkey is legal and regulated. Sex workers must have Turkish citizenship; foreign citizens cannot legally practice prostitution. Trafficking, smuggling with the intent to traffic, pimping, enforcing, or in any

other way supporting the activities of a trafficking operation is illegal. The law also prohibits and provides punishment for individuals who own, operate or work to support the operation of brothels associated with human trafficking. The minimum age for prostitution in Turkey is 18.

1F. (SBU) According to figures provided by the Ministry of Interior, security forces apprehended 308 suspected human traffickers in 2007. 175 were placed under arrest after initial judicial processing, 83 were freed to be tried on release, 47 suspects are being sought on arrest warrants, and three were released without charges.

According to charts provided by the MOJ's Judicial Records Statistics Bureau via the Ministry of Foreign Affairs (MFA), Turkish prosecutors launched 163 Article 80 investigations in 2007 (119 in the last three quarters of 2007). 23 such investigations were carried over from 2006.

According to charts provided by the MOJ's Judicial Records Statistics Bureau via MFA, Turkish courts opened 88 Article 80 cases (files), involving 422 suspects, and continued work on 75 cases, involving 397 suspects, in 2007. (76 cases, involving 354 suspects, were opened in the last three quarters of 2007.) In 2007, the courts resolved 72 cases involving 355 suspected traffickers. According to the charts received so far, the majority of suspects were acquitted or the cases referred to other courts or combined with other proceedings. Four traffickers were reported convicted, and received imprisonment plus a judicial fine. ****MFA has

notified post by diplomatic note that MOJ statistics are incomplete. We will follow-up with the final statistics as soon as they become available.***

First quarter 2008 judicial statistics were not yet available.

Post was unable to obtain specific data on time served by the reporting deadline. The GOT does not have a central database or tracking system for incarcerated individuals and must seek information from each province by fax. We will provide the information if and when it becomes available.

No evidence was reported to us that Turkey is a labor source country. Labor exploitation can be prosecuted under Article 80, which carried penalties of eight to twelve years imprisonment and heavy fines (see part C).

1G. (U) The GOT has broadly, and the Turkish National Police (TNP) specifically, institutionalized TIP-related training and conducts regular train-the-trainer sessions within its respective agencies. TNP also participates in training with various countries at the Turkish Academy to Fight Against Drugs and Organized Crime (TADOC) and through the Southeast Europe Cooperation Initiative (SECI). TNP reported that about 659 law enforcement officials received TIP training in 2007 -- hundreds more when regional and EC training is included. TIP training in Turkey includes: victim identification, national and international regulations, international coordination, victim sensitivity, NGO cooperation, investigative techniques, data collection and database management. TNP estimates that since 2004, over 5,000 police have received TIP-specific training. Judges and prosecutors also continued to receive TIP training.

During the reporting period, Turkish law enforcement, judicial authorities, other government agencies, media representatives, IOM, NGOs, municipalities and other local government officials participated in a series of regional TIP workshops and seminars, including the northeast Black Sea region (May 24-25, 2007), and in Antalya (July 9-10, 2007).

During the reporting period the TNP engaged in continued efforts to educate the media on TIP, namely the difference between prostitution and exploitation, as well as the difference between TIP and human smuggling. While still prone to inaccuracy, the media has greatly improved its TIP reporting during the reporting period; most major media outlets now refer to victims as "victims," and no longer as "Natashas." The media is also an important source of tips to the TIP helpline (see part 1, septel).

During the reporting period the Jandarma continued training its personnel via its mobile training unit using a course titled, "The Importance of the Fight Against Trafficking and Necessary Measures." It distributed 3,280 copies of its "Guide to Fight Human Trafficking Crimes" to Jandarma officers in 2007. The guide discusses national and international legal documents, TIP awareness during an investigation, how evidence should be collected for the investigation, protection of witnesses, and victim sensitivity.

In July 2007, the TNP, in conjunction with other taskforce agencies, and in partnership with the Berlin Police and the Ludwig Boltzmann Institute of Human Rights, Austria, concluded a European Union (EU) "twinning project" on "Strengthening the Institutional Capacity in the Fight Against Human Trafficking." The 1.2 million Euro project's aim was to raise Turkish standards in the fight against TIP by strengthening institutions, raising public awareness, improving victim assistance, strengthening the legal framework, and training. The comprehensive strategy which emerged from the "twinning project" contributed to the development of a new national action plan, currently awaiting the Prime Minister's signature and translation into English (see part 1, septel). According to TNP Deputy Director and Project Leader Mehmet Tokgoz, the project entailed 90 activities, including 238 Turkish, German, Austrian, and EC

experts, and reached 1,100 different Turkish personnel.

One TNP and one MOJ official, along with one employee from each of the two NGOs operating Turkey's dedicated TIP-shelters, participated in a Department-sponsored TIP IVLP program with Georgian counterparts during the reporting period.

1H. (SBU) The GOT has concluded MOUs or Protocols on TIP with the following countries: Belarus (2004), Georgia (2005), Ukraine (2005), Azerbaijan (2005), Moldova (2006), and Kyrgyzstan (2006). The TNP had planned to send a delegation to Georgia in late 2007 to discuss improving anti-TIP cooperation, but was delayed due to political events there. The delegation is now expected to visit Georgia in March 12008. The TNP hosted a delegation of Ukrainian experts and law enforcement during the reporting period. Turkish law enforcement and judicial authorities cooperate actively with other governments in the investigation and prosecution of trafficking cases. From sustained joint investigations to simple information exchanges, such international cooperation is extensive and normal. As reported part 1, septel, the GOT also organized and participated actively in numerous regional conferences and workshops on TIP.

The TNP reported particularly strong bilateral cooperation with Moldova, Ukraine and Belarus, but has complained that source countries do not always conduct thorough investigations of alleged traffickers in response to Turkish law enforcement requests. They also report that source country law enforcement officials sometimes interrupt a Turkish investigation when asked for investigative assistance, and do not always share information. The GOT further notes that identified trafficking victims returning to their countries sometimes return to Turkey soon after they are returned home, with an intent to engage prostitution, and are again victimized. IOM reported that Georgian victims, in particular, often waive the IOM/shelter referral mechanism and choose to return across the border directly to Georgia. Such victims are more likely to be re-victimized. The TNP has also complained that illegal migrants (as opposed to identified victims) returned by Turkey to source countries, often claim trafficking victimization when they return home, so as to avoid penalties for violating their own countries' migration laws.

1I. (U) The GOT is prohibited by law from extraditing its own nationals charged with a crime abroad, including trafficking.

The universal jurisdiction norm is recognized by the Turkish Criminal Code on the basis of certain offenses and crimes. Included in this norm are migrant smuggling and trafficking in human beings. A foreigner or Turkish trafficker is indictable and punishable in Turkey. The Turkish Minister of Justice may request a trial process be launched in Turkey against an accused person who has already been through the legal system in conjunction with these offenses in another country.

1J. (SBU) The GOT does not tolerate official involvement in trafficking and we have no evidence to suggest such tolerance or involvement at senior levels. There were scattered media reports about low-level police and Jandarma officials arrested for crimes related to trafficking during the reporting period.

1K. (SBU) MFA reported that between 2004-2007, 32 public officials were subject to judicial action for assisting traffickers, mediating prostitution and/or accepting bribes.

1L. (SBU) The GOT did not report that any Turkish peacekeepers deployed abroad were engaged in or facilitated severe forms of trafficking or exploited victims of such trafficking.

1M. (SBU) We do not have evidence suggesting Turkey is a

source or destination country for organized child sex tourism, or that Turkish citizens travel to other countries to engage in child sex tourism. Turkish law severely punishes sexual abuse and/or trafficking of minors (see paras A and D).

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